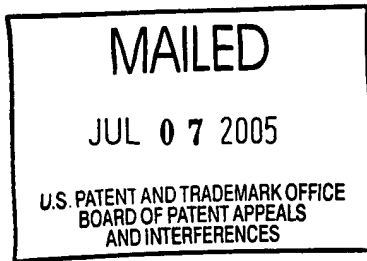


UNITED STATES PATENT AND TRADEMARK OFFICE



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BEFORE THE BOARD OF PATENT APPEALS  
AND INTERFERENCES  
\_\_\_\_\_

Ex parte HIDEFUMI FUJIMOTO et al.  
\_\_\_\_\_

Application 09/857,382  
\_\_\_\_\_

ORDER RETURNING UNDOCKETED APPEAL TO EXAMINER  
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This application was electronically received at the Board of Patent Appeals and Interferences on June 22, 2005. A review of the application has revealed that the application is not ready for docketing as an appeal. Accordingly, the application is herewith electronically returned to the examiner. The matters requiring attention prior to docketing are identified below.

A review of the record indicates that in the Final Rejection filed November 26, 2002, the following rejections are made:

1. Claim 13 is rejected under 35 U.S.C. 112,  
first paragraph . . . ;<sup>1</sup>

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<sup>1</sup>This rejection was overcome by the amendment filed April 25, 2003. See the Advisory Action mailed June 16, 2003.

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2. Claims 1-7, 9-10, 12 and 14-20 are rejected under 35 U.S.C. 103(a) . . . ; and

3. Claim 8 is rejected under 35 U.S.C. 103(a).

However, in the Examiner's Answer mailed August 26, 2003, the rejections are listed as follows:

1. Claims 1, 3-7, 9-10 and 12-20 are rejected under 35 U.S.C. 103(a);<sup>2</sup> and

2. Claim 8 is rejected under 35 U.S.C. 103(a) . . . .

It appears that the § 103(a) of claims 1-7, 9-10, 12 and 14-20 listed above is a new ground of rejection.

On December 1, 1997, the rule pertaining to the Examiner's Answer and Reply Brief (37 CFR § 1.193) was amended to read as follows:

(a)(2) An examiner's answer must not include a new ground of rejection. . . .

Accordingly, it is

ORDERED that the application is returned to the examiner:

1. for a determination regarding the status of the rejection of claims 1, 3-7, 9-10 and 12-20 under 35 U.S.C. § 103(a) (If this rejection is to remain, the rejection is

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<sup>2</sup>Claim 2 was cancelled per the amendment filed April 25, 2003.


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considered to be a new ground of rejection and the entry of the Examiner's Answer mailed August 26, 2003 is inappropriate. Accordingly, the Examiner's Answer needs to be vacated and prosecution reopened. If the rejection is to be withdrawn, the Examiner's Answer will need to be vacated and a Supplemental Examiner's Action issued in its place); and

2. for such further action as may be appropriate.

BOARD OF PATENT APPEALS  
AND INTERFERENCES

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